

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANNETTE FERLET,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; KNUCKLES,
KOMOSINSKI, & MANFRO, LLP;
PENNYMAC LOAN SERVICES, LLC,

Defendants.

)
)
) Case No. 1:19-cv-02131-AT
)
)

) DEFENDANT BANK OF AMERICA,
) N.A.'S ANSWER AND AFFIRMATIVE
) DEFENSES TO PLAINTIFF'S
) COMPLAINT
)
)
)

Defendant Bank of America, N.A. ("BANA"), by and through its undersigned counsel, hereby submits this Answer and Affirmative Defenses to Plaintiff Annette Ferlet's ("Plaintiff") Complaint as it pertains to BANA as follows:

INTRODUCTION

1. BANA admits that Plaintiff purports to bring a claim against BANA under the Fair Debt Collection Practices Act ("FDCPA") which is codified at 15 U.S.C. §1962, et seq, and the New York Deceptive Practices Act ("DPA") which is codified at General Business Law § 349, but denies that BANA violated the FDCPA, or the DPA, or that Plaintiff was damaged by any action or inaction by BANA. By way of further response, BANA denies that Plaintiff is entitled to any of the relief against BANA, including the relief sought in the Complaint.

JURISDICTION AND VENUE

2. Paragraph 2 contains legal conclusions and/or legal arguments to which no response is required. To the extent a response is required, BANA denies the allegations in Paragraph 2, except to admit that the referenced statutes speak for themselves and are the best evidence of their contents.

PARTIES

3. Paragraph 3 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Complaint and denies them on that basis

4. Paragraph 4 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Complaint and denies them on that basis.

5. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint and denies them on that basis.

6. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint and denies them on that basis.

7. Paragraph 7 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint and denies them on that basis.

8. BANA denies the allegations in Paragraph 8, and affirmatively states that Bank of America, N.A. is a national banking association with a principal place of business in the City of Charlotte, in the County of Mecklenburg and State of North Carolina, and regularly conducts business in the State of New York.

9. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint and denies them on that basis.

10. Paragraph 10 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint and denies them on that basis.

11. Paragraph 11 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA denies the allegations in Paragraph 11 as to BANA and with regard to remaining Defendants, lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint and denies them on that basis.

12. Paragraph 12 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint and denies them on that basis.

13. Paragraph 13 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint and denies them on that basis.

14. Paragraph 14 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint and denies them on that.

STATEMENT OF FACTS

15. Admitted.

a. 2010 Foreclosure Action

16. Paragraph 16 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint and denies them on that basis, except to admit that the referenced complaint speaks for itself and is the best evidence of its contents.

17. Paragraph 17 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint and denies them on that basis, except to admit that the referenced discontinuance speaks for itself and is the best evidence of its contents.

b. 2018 Foreclosure Action

18. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint and denies them on that basis. BANA further states that Exhibit A speaks for itself and is the best evidence of its contents.

19. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint and denies them on that basis. BANA further states that Exhibit A speaks for itself and is the best evidence of its contents.

20. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint and denies them on that basis.

21. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint and denies them on that basis, except to admit that a foreclosure suit was filed against Plaintiff on or about July 25, 2018.

22. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint and denies them on that basis, except that the publicly filed documents in the 2018 Foreclosure speak for themselves and are the best evidence of their contents.

23. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint and denies them on that basis.

24. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Complaint and denies them on that basis, except to admit that the referenced Verified Answer with Counterclaims speaks for itself and is the best evidence of its contents.

25. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint and denies them on that basis, except to admit that the referenced letter speaks for itself and is the best evidence of its contents.

FIRST CAUSE OF ACTION
(Violation of Fair Debt Collection Practices Act)

26. BANA repeats, re-alleges, and incorporates by reference its responses and defenses to all paragraphs above as if fully set forth herein.

27. Paragraph 27 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint and denies them on that basis.

28. Paragraph 28 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint and denies them on that basis.

29. BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 of the Complaint and denies them on that basis.

30. Paragraph 30 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint and denies them on that basis.

31. Paragraph 31 contains legal conclusions and/or legal argument to which no response is required. To the extent a response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint and denies them on that basis.

32. Paragraph 32 contains legal conclusions and/or legal argument to which no response is required. To the extent a response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the Complaint and denies them on that basis.

SECOND CAUSE OF ACTION
(Violation of the General Business Law)

33. BANA repeats, re-alleges, and incorporates by reference its responses and defenses to all paragraphs above as if fully set forth herein.

34. Paragraph 34 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint and denies them on that basis, except to admit that the referenced law speaks for itself and is the best evidence of its contents.

35. Paragraph 35 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 of the Complaint and denies them on that basis.

36. Paragraph 36 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint and denies them on that basis.

37. Paragraph 37 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 of the Complaint and denies them on that basis.

38. Paragraph 38 contains legal conclusions and/or legal arguments to which no response is required. To the extent any response is required, BANA lacks knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint and denies them on that basis.

PRAYER FOR RELIEF

BANA denies that Plaintiff is entitled to any relief claimed in the Prayer For Relief of the Complaint.

GENERAL DENIAL

BANA hereby denies all allegations in the Complaint not expressly admitted.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

BANA specifically denies that all conditions precedent to Plaintiff's claims for recovery have occurred or been met.

THIRD AFFIRMATIVE DEFENSE

Any injuries or damages allegedly sustained by Plaintiff were the result of the conduct of others over whom BANA had no control.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovering damages from BANA by reason of Plaintiff's failure to mitigate damages.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's action is barred, in whole or in part, by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Any acts or omissions by BANA were not a direct or proximate cause of the damages sought by Plaintiff in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

BANA conducted itself in conformity with all applicable laws and regulations.

EIGHTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which an award of punitive damages can be granted.

NINTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which an award of attorney's fees and/or costs can be granted.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by any and all applicable statutes of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable equitable doctrines of waiver, laches, estoppel, and/or set-off.

TWELFTH AFFIRMATIVE DEFENSE

Any damages suffered by Plaintiff resulted from the acts of third persons over whom BANA has/had no control.

THIRTEENTH AFFIRMATIVE DEFENSE

The Court should abstain from exercising jurisdiction over Plaintiff's Complaint

pursuant to the *Roquer-Feldman*, *Colorado River* and/or *Younger* abstention doctrines.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by *Res Judicata* and/or Collateral Estoppel.

RESERVATION OF DEFENSES

BANA reserves the right to add additional affirmative defenses as the case proceeds and the facts and circumstances surrounding the case are revealed during discovery.

WINSTON & STRAWN, LLP

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*Attorneys for Defendant Bank of America,
N.A.*

Dated: New York, NY
April 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2019, I electronically filed with the Clerk of the Court the foregoing document using the CM/ECF system which will send notification of such filing(s) to all counsel of record.

Dated: April 22, 2019

WINSTON & STRAWN, LLP

/s/ Michael E. Blaine
Michael E. Blaine, Esq.